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No. 06-1321

IN THE
Supreme Court of the United States

MYRNA GÓMEZ-PEREZ,

Petitioner,

v.

JOHN E. POTTER, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

JOINT APPENDIX

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November 13, 2007

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NOTICE

The following documents have been omitted in the printing of this Joint Appendix. They may be found in the Petitioner's Appendix to the 06-1321 Petition For A Writ Of Certiorari at the following pages.

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UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO (SAN JUAN)

3:03-cv-02236-DRD-GAG

GÓMEZ-PÉREZ,

Plaintiff,

v.

POTTER,

Defendant.

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
11/18/2003	1	COMPLAINT Filing Fee $ 150 Receipt # 140881 (np) (Entered: 12/01/2003)
12/30/2003		SUMMONS issued for John E. Potter, US Postal Service, Atty Gen, US Atty. Follow up by 3/29/04 . (np) (Entered: 12/31/2003)
01/13/2004	2	SUMMONS Returned Executed as to John E. Potter, US Postal Service by certified mail, US Atty thru M. Ferrer on 1/13/04. Answer due on 3/15/04 for US Postal Service, for John E. Potter (np) (Entered: 01/15/2004)
03/08/2004	3	First MOTION for Extension of Time to File Answer *to Complaint* filed by Ginette L. Milanes on behalf of all defendants Suggestions in opposition/ response due by 3/22/2004 (Milanes, Ginette) (Entered: 03/08/2004)

DATE	NO.	PROCEEDINGS
03/11/2004	4	ORDER granting 3 Motion for Extension of Time to Answer the complaint. Answer deadline due by 4/12/2004. Signed by Judge Clerk on 3/11/04. (np,) Modified on 4/16/2004 (np,). DOCKETED IN ERROR. (Entered: 03/11/2004)
04/05/2004	5	*Defendant's* ANSWER to Complaint filed by Ginette L. Milanes on behalf of Defendant John E. Potter.(Milanes, Ginette) (Entered: 04/05/2004)
06/08/2004	6	ORDER SETTING INITIAL SCHEDULING AND CASE MANAGEMENT CONFERENCE, Set Scheduling Order Deadlines; Memorandum Filing due by 7/22/2004. Initial Scheduling Conference set for 8/5/2004 08:45 AM in DRD's Chambers before Daniel R Dominguez. Signed by Judge Daniel R Dominguez on 06/08/2004. (om,) (Entered: 06/08/2004)
07/22/2004	7	CASE MANAGEMENT MEMORANDUM by John E. Potter. (Milanes, Ginette) (Entered: 07/22/2004)
07/22/2004	8	NOTICE of Appearance by Edelmiro Antonio Salas-Gonzalez by on behalf of Myrna Gomez-Perez (Salas-Gonzalez, Edelmiro) (Entered: 07/22/2004)
07/22/2004	9	CASE MANAGEMENT MEMORANDUM by Myrna Gomez-Perez. (Salas-Gonzalez, Edelmiro) (Entered: 07/22/2004)

DATE	NO.	PROCEEDINGS
08/06/2004	10	MOTION to Substitute *SAUSA Ginette L. Milanes* Attorney Isabel Munoz-Acosta filed by Isabel Munoz-Acosta on behalf of John E. Potter, United States Postal Service (Munoz-Acosta, Isabel) (Entered: 08/06/2004)
08/06/2004	11	NOTICE *to the Court Regarding Re-Service of Documents* by John E. Potter, United States Postal Service (Munoz-Acosta, Isabel) (Entered: 08/06/2004)
08/07/2004	12	Minute Entry for proceedings held before Judge Daniel R Dominguez : Minute of Proceedings held on 08-05-04. (jf,) (Entered: 08/07/2004)
08/07/2004	13	ORDER granting 10 Motion to Substitute Attorney. Attorney Ginette L. Milanes terminated AUSA Isabel Munoz is entered as counsel for the Government. Signed by Judge Daniel R Dominguez on 08/07/04. (jf,) (Entered: 08/07/2004)
08/07/2004		Set Deadlines/Hearings: Initial Conference set for 9/24/2004 08:45 AM in DRD's Chambers before Daniel R Dominguez. (jf,) (Entered: 08/07/2004)
09/01/2004	14	INFORMATIVE Motion filed by Edelmiro Antonio Salas-Gonzalez on behalf of Myrna Gomez-Perez (Salas-Gonzalez, Edelmiro) (Entered: 09/01/2004)

DATE	NO.	PROCEEDINGS
09/24/2004	15	ORDER. Plaintiffs Informative Motion as to the service of defendants with Plaintiffs Answers to Interrogatories, documents requested and compliance with request for admissions (Docket No. 14) is hereby NOTED . Signed by Judge Daniel R Dominguez on 09-24-04. (lt) (Entered: 09/24/2004)
11/08/2004	16	NOTICE of Appearance by Katherine Gonzalez-Valentin by on behalf of all defendants (Gonzalez-Valentin, Katherine) (Entered: 11/08/2004)
11/12/2004	17	MOTION requesting Order *Under Privacy Act* filed by Edelmiro Antonio Salas-Gonzalez on behalf of Myrna Gomez-Perez (Salas-Gonzalez, Edelmiro) (Entered: 11/12/2004)
11/18/2004	18	MOTION for extension of time until 2/18/2005 discovery deadline to 4/22/05 diapositive motion deadline filed by Katherine Gonzalez-Valentin on behalf of John E. Potter, United States Postal Service Suggestions in opposition/response due by 12/1/2004 (Gonzalez-Valentin, Katherine) (Entered: 11/18/2004)
12/19/2004	19	ORDER DENYING 17 Motion requesting Order. At the Initial Case Management and Scheduling Conference held on September 24, 2004, the Court reminded the parties that no discovery related motions were to be

DATE	NO.	PROCEEDINGS

filed with the Court except by prior exhaustion of Local Rule 26 (b). Specifically, the parties were advised that if no agreement was reached after conducting a Local Rule 26(b) meeting, only then, the parties were to reach the law clerk assigned to this case via telephone and inform the matter in controversy. Then the parties would submit their respective positions as to the matter via fax and the judge would try to reach the parties within forty-eight (48) hours of their call to resolve the matter (the parties may request a transcript and the judge will issue a Minute of Proceedings as to the issue, the position of the parties and the resolution of the matter). Finally, if the parties' telephone call was not answered by the judge within five (5) days after the call, only then, will the parties be authorized to file a discovery-related motion with the Court.

Nevertheless, if the Court deemed appropriate that to solve the matter it needs to hold a hearing, said hearing will be scheduled promptly thereafter. The instant motion has failed to show that the procedure advised to the parties has been properly exhausted therefore, the instant motion is DENIED. Signed by Judge Daniel R

DATE	NO.	PROCEEDINGS
		Dominguez on 12/19/04. (jf,) (Entered: 12/19/2004)
12/21/2004	20	MOTION for Reconsideration & *Seeking Relief from Order* re [19] Order on Motion requesting Order,,,,, filed by Edelmiro Antonio Salas-Gonzalez on behalf of Myrna Gomez-Perez Suggestions in opposition/response due by 1/3/2005 (Related document(s)[19]) (Salas-Gonzalez, Edelmiro) (Entered: 12/21/2004)
01/19/2005	21	*** FILED IN ERROR - One Party Missing *** Joint MOTION for Protective Order filed byKatherine Gonzalez-Valentin on behalf of all defendants Suggestions in opposition/ response due by 2/1/2005 (Attachments: # 1)(Gonzalez-Valentin, Katherine) Modified on 1/19/2005 (ov,). (Entered: 01/19/2005)
01/19/2005	22	Joint MOTION for Protective Order filed byKatherine Gonzalez-Valentin on behalf of all parties Suggestions in opposition/response due by 2/1/2005 (Attachments: # 1)(Gonzalez-Valentin, Katherine) (Entered: 01/19/2005)
01/20/2005	23	MOTION to Withdraw Motion re:20 MOTION for Reconsideration & *Seeking Relief from Order* re [19] Order on Motion requesting Order,,,,, filed byEdelmiro Antonio Salas-Gonzalez on behalf of Myrna Gomez-Perez (Re-

DATE	NO.	PROCEEDINGS
		lated document(s)20) (Salas-Gonzalez, Edelmiro) (Entered: 01/20/2005)
01/31/2005	24	Minute Entry for proceedings held before Judge Daniel R Dominguez : ISC called oon [sic] 9/24/04. Discovery deadline for 11/19/04 limited to liability issues. Dispositive mots deadline for 12/17/04, oppositions 30 days thereafter. (jf,) Modified on 2/8/2005 adding text (np,). (Entered: 01/31/2005)
01/31/2005	25	ORDER withdrawing 20 Motion for Reconsideration, terminating 21 Motion for Protective Order, granting 23 Motion to Withdraw. See joint motion for the issuance of protective order at Docket No. 22 . Signed by Judge Daniel R Dominguez on 01/31/05. (jf,) (Entered: 01/31/2005)
02/09/2005	26	ORDER granting/moot 18 Motion for extension of time. The discovery cutoff date is reset for February 28, 2005 and the Dispositive Motions Deadline is reset for the 1st day of April 2005. The parties are advised that NO FURTHER EXTENSIONS OF TIME SHALL BE GRANTED. The Court grants the joint request Motion for the Issuance of Protective order at Docket No. 22. The Court shall issue a Separate Order.. Signed by Judge Daniel R Dominguez on 02/09/05. (jf,) (Entered: 02/09/2005)

DATE	NO.	PROCEEDINGS
02/09/2005	27	PROTECTIVE ORDER pursuant to Joint Motion for The Issuance of Protective Order at Docket No. 22. Signed by Judge Daniel R Dominguez on 02/09/05. (jf,) (Entered: 02/09/2005)
02/23/2005	28	ORDER: The Court hereby ORDERS counsel to appear at a Status Conference set for the 3rd day of March 2005 at 5:30 p.m. The Court shall address Rule 26 issues. IT IS SO ORDERED. NO CONTINUANCES SHALL BE GRANTED. Signed by Judge Daniel R Dominguez on 02/23/05. (jf,) (Entered: 02/23/2005)
02/25/2005	29	MOTION to Continue *Status Conference* filed byKatherine Gonzalez-Valentin on behalf of all defendants (Gonzalez-Valentin, Katherine) (Entered: 02/25/2005)
03/01/2005	30	ORDER granting as requested 29 Motion to Continue . The Court grants the continuance of the Status Conference. The Status Conference is rescheduled for the 16th day of March 2005 at 5:30 p.m. As per the motion filed by the parties this is an available date for both counsel. ABSLOLUTELY NO FURTHER CONTINUANCES SHALL BE GRANTED. Further, the dispositive motion deadline is set for the 18th day of April 2005. THIS IS FIRM A DATE AND NO EXTENSIONS OF TIME SHALL

DATE	NO.	PROCEEDINGS
		NOT BE GRANTED. ANY MOTION REQUESTING AN EXTENSION OF TIME OR A CONTINUANCE SHALL BE SUMMARILY DENIED. Signed by Judge Daniel R Dominguez on 02/28/05. (jf,) (Entered: 03/01/2005)
03/16/2005	31	ORDER : The Status Conference scheduled for March 16, 2005 is hereby CONTINUED for the 23rd day of March 2005 at 5:00 p.m. The Dispositive Motion Deadline shall be reset at said conference. IT IS SO ORDERED.. Signed by Judge Daniel R Dominguez on 03/16/05. (jf,) (Entered: 03/16/2005)
03/23/2005	50	Minute Entry for proceedings held before Judge Daniel R Dominguez : Status Conference held on 3/23/2005. (jf,) (Entered: 08/02/2005)
04/01/2005	32	Motion In Compliance *with Court Order Informing Agreement as to Discovery Issue* filed byKatherine Gonzalez-Valentin on behalf of all parties (Gonzalez-Valentin, Katherine) (Entered: 04/01/2005)
04/14/2005	33	ORDER granting 32 Motion In Compliance. The Court hereby sets the 17th day of May 2005, as the Dispositive Motion Deadline. Oppositions shall be filed within twenty (20) days. Counsel are advised that the dates provided are FIRM DATES AND NO FURTHER EXTENSIONS OF TIME

DATE	NO.	PROCEEDINGS
		SHALL BE GRANTED. IT IS SO ORDERED. . Signed by Judge Daniel R Dominguez on 04/14/05. (jf,) (Entered: 04/14/2005)
05/10/2005	34	Joint MOTION *FOR ISSUANCE OF* ORDER TO PRODUCE RECORDINGS filed byKatherine Gonzalez-Valentin on behalf of all parties (Attachments: # 1 Text of Proposed Order)(Gonzalez-Valentin, Katherine) Modified on 5/16/2005 correcting title (np,). (Entered: 05/10/2005)
05/10/2005		***SEE IMAGE ON 34*** MOTION for Extension of Time until 6/7/05 to file dispositive motions filed byKatherine Gonzalez-Valentin on behalf of all parties (np,) (Entered: 05/16/2005)
05/23/2005	35	ORDER granting34 Motion for Miscellaneous Relief. Therefore, the firm of A. Rodriguez Reporting Services and/or the individual reporter(s) engaged to provide professional services relating to the taking of depositions in the above captioned case is hereby ORDERED to produce on or before the 31st day of May 2005, the tape recordings for said depositions. Should the firm of A. Rodriguez Reporting Services and/or the individual reporter involved in providing services fail to comply with this Order, the Court shall impose sanctions which

DATE	NO.	PROCEEDINGS
		may include contempt of Court. Plaintiff is ordered to serve this Order to the reporting firm on or before the 25th day of May 2005. Likewise, plaintiff shall file on or before the 26th day of May 2005, a motion evidencing that service was performed as ordered. Further, Plaintiff shall provide copies of the tapes to the defendant on or before the 2nd day of June 2005. Likewise, the Government shall file a motion informing the Court the date the requested tape recordings were provided by the plaintiffs . Signed by Judge Daniel R Dominguez on 05/23/05. (jf,) (Entered: 05/23/2005)
05/25/2005	36	First Motion In Compliance *with Order* filed byEdelmiro Antonio Salas-Gonzalez on behalf of Myrna Gomez-Perez (Attachments: # 1 Exhibit Transcript Sample# 2 Exhibit Return Service of Order)(Salas-Gonzalez, Edelmiro) (Entered: 05/25/2005)
05/26/2005	37	Second Motion In Compliance *with Order* filed byEdelmiro Antonio Salas-Gonzalez on behalf of Myrna Gomez-Perez (Salas-Gonzalez, Edelmiro) (Entered: 05/26/2005)
06/07/2005	38	Motion In Compliance *With Court Order* filed byKatherine Gonzalez-Valentin on behalf of John E. Potter (Gonzalez-Valentin, Katherine) (Entered: 06/07/2005)

DATE	NO.	PROCEEDINGS
06/12/2005	39	ORDER noted 36 Motion In Compliance, noted 37 Motion In Compliance, noted 38 Motion In Compliance . Signed by Judge Daniel R Dominguez on 06/12/05. (jf,) (Entered: 06/12/2005)
06/14/2005	40	CERTIFICATE OF SERVICE by John E. Potter re 38 Motion In Compliance *With Court Order* (Gonzalez-Valentin, Katherine) (Entered: 06/14/2005)
07/05/2005	41	MOTION for Extension of Time until July 6, 2005 to file Motion for Summary Judgment filed byKatherine Gonzalez-Valentin on behalf of John E. Potter Suggestions in opposition/response due by 7/18/2005 (Gonzalez-Valentin, Katherine) (Entered: 07/05/2005)
07/06/2005	42	MOTION for Extension of Time until July 7, 2005 to file summary judgment motion filed byKatherine Gonzalez-Valentin on behalf of John E. Potter Suggestions in opposition/response due by 7/19/2005 (Gonzalez-Valentin, Katherine) (Entered: 07/06/2005)
07/07/2005	43	MOTION for Summary Judgment *and Memorandum in Support Thereof* filed byKatherine Gonzalez-Valentin on behalf of John E. Potter Suggestions in Opposition to Summary Judgment due by 7/20/2005. (Gonzalez-Valentin, Katherine) (Entered: 07/07/2005)

DATE	NO.	PROCEEDINGS
07/07/2005	44	STATEMENT *OF MATERIAL FACTS OVER WHICH THERE ARE NO GENUINE ISSUES TO BE TRIED* filed by John E. Potter re: 4.3. MOTION for Summary Judgment *and Memorandum in Support Thereof filed* by John E. Potter,. (Attachments: #1 # 2 # 3 # 4 # 5 # 6 # 7 # 8 # 9 # 10 # 11 # 12 # 13 # 14 # 15 # 16 # 17 # 18 # 19 # 20 # 21 # 22 # 23 # 24 # 25 # 26 # 27 # 28 # 29 # 30 # 31 # 32 # 33 # 34 # 35 # 36 # 37 # 38 # 39 # 40 # 41 # 42 # 43 # 44) (Gonzalez-Valentin, Katherine) (Entered: 07/07/2005)
07/07/2005	45	MOTION for Leave to File Spanish language documents filed byKatherine Gonzalez-Valentin on behalf of John E. Potter (Gonzalez-Valentin, Katherine) (Entered: 07/07/2005)
07/19/2005	46	NOTICE *OF FILING OF TRANSLATION OF DOCUMENT* by John E. Potter re 44 Statement„ (Gonzalez-Valentin, Katherine) Modified on 7/20/2005. Filed Without attachment. (ft,). (Entered: 07/19/2005)
07/19/2005	47	NOTICE *to the Court* by John E. Potter re 46 Notice (Other) (Attachments: # 1)(Gonzalez-Valentin, Katherine) (Entered: 07/19/2005)
07/27/2005	48	RESPONSE in Opposition to Motion *for Summary Judgment and Memorandum of Law in Support Thereof*

DATE	NO.	PROCEEDINGS
		filed by Myrna Gomez-Perez Re: 43 MOTION for Summary Judgment *and Memorandum in Support Thereof* filed by John E. Potter, (Salas-Gonzalez, Edelmiro) (Entered: 07/27/2005)
07/27/2005	49	RESPONSE in Opposition to Motion *Statment of Material Fact Over Which there are no Genuine Issues to be Tried* filed by Myrna Gomez-Perez Re: 44 Statement„ filed by John E. Potter, (Attachments: # 1 Exhibit Ex. 1# 2 Exhibit Ex. 2# 3 Exhibit Ex. 3# 4 Exhibit Ex. 4# 5 Exhibit Ex. 5# 6 Exhibit Ex. 6# 7 Exhibit Ex. 7# 8 Exhibit Ex. 8)(Salas-Gonzalez, Edelmiro) (Entered: 07/27/2005)
08/05/2005	51	MOTION for Leave to File reply 43 MOTION for summary judgment *in Reply to Plaintiff's Opposition to Motion for Summary Judgment* filed by Katherine Gonzalez-Valentin on behalf of John E. Potter Suggestions in opposition/response due by 8/18/2005 (Gonzalez-Valentin, Katherine) Modified on 8/10/2005 adding text (np,). (Entered: 08/05/2005)
08/13/2005	52	ORDER terminating [] Motion for Extension of Time to File; granting/moot 45 Motion for Leave to File Spanish language documents, see Docket No. 46 . Signed by Judge Daniel R Dominguez on 08/12/05. (jf,) (Entered: 08/13/2005)

DATE	NO.	PROCEEDINGS
08/13/2005	53	ORDER granting in part and denying in part 51 Motion for Leave to File . The defendant is authorized to file a Reply on or before the 22nd day of August 2005. Said Reply shall not exceed a maximum of ten (10) pages and it shall not be a rehash of legal arguments previously presented to the Court or otherwise it shall be SUMMARILY DENIED. Likewise, plaintiff shall file a Surreply ten (10) days thereafter and shall be limited to a maximum length of ten (10)pages or it shall be also SUMMARILY DENIED. ABSOLUTELY ANY REQUESTS FOR AN EXTENSION OF TIME SHALL BE SUMMARILY DENIED. IT IS SO ORDERED. Signed by Judge Daniel R Dominguez on 08/12/05. (jf,) (Entered: 08/13/2005)
08/22/2005	54	MOTION for extension of time until August 30, 2005 filed byLisa E. Bhatia-Gautier on behalf of John E. Potter Suggestions in opposition/ response due by 9/6/2005 (Attachments: # 1) (Bhatia-Gautier, Lisa) (Entered: 08/22/2005)
08/22/2005	55	ORDER granting as requested 54 Motion for extension of time .Signed by Judge Daniel R Dominguez on 08/22/05. (jf,) (Entered: 08/22/2005)
08/30/2005	56	REPLY to Response to Motion *by Plaintiff in Opposition 43 Defendant's*

DATE	NO.	PROCEEDINGS
		Motion for Summary Judgment filed by John E. Potter Re: 51 MOTION for Leave to File Document *in Reply to Plaintiffs Opposition to Motion for Summary Judgment* filed by John E. Potter,, 54 MOTION for extension of time until August 30, 2005 filed by John E. Potter, (Gonzalez-Valentin, Katherine) Modified on 8/31/2005 creating link (np,). (Entered: 08/30/2005)
08/30/2005	57	STATEMENT *in Reply Relating to Motion for Summary Judgment and Reply* filed by John E. Potter. (Attachments: # 1 Exhibit 1# 2 Exhibit 2 - Cintron Declaration) (Gonzalez-Valentin, Katherine) (Entered: 08/31/2005)
09/07/2005	58	First MOTION for extension of time until 09/12/05 to File Sur-Reply 43 filed by Edelmiro Antonio Salas-Gonzalez on behalf of Myrna Gomez-Perez Suggestions in opposition/ response due by 9/20/2005 (Attachments: # 1 Exhibit Hospital Statements)(Salas-Gonzalez, Edelmiro) Modified on 9/8/2005 creating link (np,). (Entered: 09/07/2005)
09/09/2005	59	ORDER granting as requested 58 Motion for extension of time . Plaintiff is Granted until September 12, 2005 to file its Surreply. Signed by Judge Daniel R Dominguez on 09/09/05. (jf,) (Entered: 09/09/2005)

DATE	NO.	PROCEEDINGS
09/12/2005	60	SURREPLY to Reply to Opposition *Reply to Plaintiffs Opposition To Motion for Summary Judgment* filed by Myrna Gomez-Perez (Salas-Gonzalez, Edelmiro) (Entered: 09/12/2005)
09/12/2005	61	SURREPLY to Reply to Opposition *Defendants' Reply Statement of Material Fact* filed by Myrna Gomez-Perez (Attachments: # 1. Exhibit Excerpts Depo. Tony Cintron# 2 Exhibit Petition# 3 Exhibit Statement by Mirna Gomez# 4 Exhibit Ex. 1 Defendant's Answer to Production of Docs.# 5 Exhibit Ex. 5 Statment by Tony Cintron # 6 Exhibit Ex. 6 Excerpts Depo. Heriberto Ramos)(Salas-Gonzalez, Edelmiro) (Entered: 09/12/2005)
11/14/2005	62	ORDER REFERRING CASE to Magistrate Judge through the computarized random assignment system for Report and Recommendation on Motion for Summary Judgment . Signed by Judge Daniel R Dominguez on 11/14/05. (jf,) (Entered: 11/14/2005)
11/16/2005	63	MEMORANDUM OF THE CLERK: Pursuant to the REFERRAL ORDER issued by Judge Daniel R. Dominguez on 11/14/05 (dkt. #62) the Motion for Summary Judgment has been assigned through random drawing within the Case Assignment System to US Magistrate Judge Camille Velez-Rive for a report and recommendation.

DATE	NO.	PROCEEDINGS
		Signed by Clerk on 11/16/05. (li,) (Entered: 11/16/2005)
11/16/2005	64	ORDER OF RECUSAL. Magistrate Judge Camille L. Velez-Rive recused. Signed by Magistrate Judge Camille L. Velez-Rive on 11/16/05. (ljt) (Entered: 11/16/2005)
11/17/2005	65	MEMORANDUM OF THE CLERK: Pursuant to the RECUSAL ORDER of Magistrate Judge Camille Velez-Rive of November 16, 2005, (dkt. #64) the Motion For Summary Judgment has been reassigned through random drawing within the Case Assignment System to Magistrate Judge Gustavo A. Gelpi for a report and recommendation. Signed by Clerk on 11/17/05. (li,) (Entered: 11/17/2005)
01/30/2006	66	REPORT AND RECOMMENDATION GRANTING 43 MOTION for Summary Judgment filed by John E. Potter. *Objections to R&R due by 2/13/2006.* Signed by Magistrate Judge Gustavo A. Gelpi on 1-30-06. (nc,) (Entered: 01/30/2006)
01/30/2006	67	ORDER re 66 REPORT AND RECOMMENDATION re 43 MOTION for Summary Judgment *and Memorandum in Support Thereof* filed by John E. Potter. The Court forewarns the parties that no extensions of time shall be granted, and that failure to

DATE	NO.	PROCEEDINGS
		submit objections within the deadline provided shall be deemed by the Court as a waiver to said objections. Set Deadlines *Objections to R&R due by 2/13/2006* . Signed by Judge Daniel R Dominguez on 1/30/06. (jf,) (Entered: 01/30/2006)
01/31/2006	68	OBJECTION to 66 Report and Recommendation *of the Hon. Magistrate Judge* filed by Myrna Gomez-Perez (Salas-Gonzalez, Edelmiro) Modified on 2/9/2006 creating ling (np,). (Entered: 01/31/2006)
01/31/2006	69	MOTION for Leave to File Document *Objection to Report and Recommendations of the Hon. Magistrate Judge* filed byEdelmiro Antonio Salas-Gonzalez on behalf of Myrna Gomez-Perez Suggestions in opposition/response due by 2/13/2006 (Attachments: # 1 Exhibit TENDERED Objections to Report and Recommendation of the Magistrate Judge)(Salas-Gonzalez, Edelmiro) (Entered: 01/31/2006)
02/03/2006	70	MOTION to Withdraw as *Attorney of Record* Attorney as to Katherine Gonzalez-Valentin filed byKatherine Gonzalez-Valentin on behalf of John E. Potter (Gonzalez-Valentin, Katherine) (Entered: 02/03/2006)

DATE	NO.	PROCEEDINGS
02/03/2006	71	ORDER granting 70 Motion to Withdraw as Attorney. Attorney Katherine Gonzalez-Valentin terminated . Signed by Judge Gustavo A. Gelpi on 2/3/06. (sm,) (Entered: 02/03/2006)
02/16/2006	72	MOTION for Leave to Appear *Appearance* filed byMiguel A. Fernandez-Torres on behalf of John E. Potter, United States Postal Service Suggestions in opposition/response due by 3/1/2006 (Fernandez-Torres, Miguel) (Entered: 02/16/2006)
02/20/2006	73	ORDER granting 72 Motion for Leave to Appear. AUSA Miguel A. Fernandez may APPEAR as counsel of record for the United States of America in substitution of AUSA Katherine Gonzalez Valentin. IT IS SO ORDERED . Signed by Judge Daniel R Dominguez on 2/20/06. (jf,) (Entered: 02/20/2006)
02/28/2006	74	ORDER granting 43 motion for summary judgment, adopting Report and Recommendation re 66 Report and Recommendation . Signed by Judge Daniel R Dominguez on 2/28/06. (jf,) (Entered: 02/28/2006)
02/28/2006	75	JUDGMENT . Signed by Judge Daniel R Dominguez on 2/28/06. (jf,) (Entered: 02/28/2006)
03/08/2006	76	NOTICE OF APPEAL as to 75 Judgment, 74 Order on Motion for Summary Judgment, Report and Recom-

DATE	NO.	PROCEEDINGS
		mendation by Myrna Gomez-Perez. *Appeal Record due by 3/22/2006.* (Ramirez-de-Leon, Jose) (Entered: 03/08/2006)
03/08/2006		USCA Appeal Fees received $ 255.00 receipt number 161596 re 76 Notice of Appeal filed by Myrna Gomez-Perez, (ne,) (Entered: 03/08/2006)
04/05/2006	77	Certified and Transmitted Record on Appeal to US Court of Appeals re 76 Notice of Appeal (Dkts. 1,2,...,74-76) (xi,) (Entered: 04/05/2006)
05/26/2006	78	USCA Case Number 06-1614 for 76 Notice of Appeal filed by Myrna Gomez-Perez. (xi,) (Entered: 05/26/2006)

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

06-1614

GÓMEZ-PÉREZ,
Plaintiff-Appellant,
v.

POTTER,
Defendant-Appellee.

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
4/21/06		CIVIL CASE docketed. Opening forms sent. Notice of Appeal filed by Appellant Mirna Gomez-Perez. Appearance form due 5/5/06. Docketing Statement due 5/5/06. Transcript Report/Order due 5/5/06. [06-1614] (mani)
4/21/06		RECORD filed: 2 volume(s) consisting of docket entries 1,2,5,6,7,9,12,19,20, 22,24,27,35,43,44,47-50,56,57,60-62, 64-66,68,74-76. [1114901-1] [06-1614] (mani)
4/25/06		Involvement of attorney Ginette L. Milanes terminated. [06-1614] (mani)
4/25/06		Involvement of attorney Katherine Gonzalez Valentin terminated. [06-1614] (mani)
4/25/06		Involvement of attorney Isabel Munoz-Acosta terminated. [06-1614] (mani)

DATE	NO.	PROCEEDINGS
5/4/06		APPEARANCE filed by Miguel A. Fernandez-Torres for Appellee John E. Potter. [1119278-1] [06-1614] (mani)
5/4/06		APPEARANCE filed by Edelmiro A. Salas Gonzalez for Appellant Mirna Gomez-Perez. [1119316-1] [06-1614] (mani)
5/4/06		DOCKETING STATEMENT filed by Appellant Mirna Gomez-Perez. [06-1614] (mani)
5/4/06		Transcript Report/Order Form filed by Appellant Mirna Gomez-Perez. Transcript is not necessary on appeal. (see Section E of docketing statement) [06-1614] (mani)
5/4/06		BRIEFING SCHEDULE. Appellant's Brief due 6/13/06. [06-1614] (mani)
5/5/06		APPEARANCE filed by Jose L. Ramirez-de-Leon for Appellant Mirna Gomez-Perez. [1119697-1] [06-1614] (mani)
6/6/06		Informative motion re: DESIGNATION of contents of appendix to brief filed by Appellant Mirna Gomez-Perez. [06-1614] (mani)
6/14/06		MOTION to request oral argument to be held in Puerto Rico filed by Appellant Mirna Gomez-Perez. Certificate of service dated 6/13/06. [06-1614] (mani)

DATE	NO.	PROCEEDINGS
6/14/06		BRIEF filed by Appellant Mirna Gomez-Perez. Length: 34 pages/8,983 words, Copies: 10, delivered by mail. Certificate of service date 6/13/06. [1135318-1] Appellees brief due 7/14/06. [06-1614] (mani)
6/14/06		ELECTRONIC DOCUMENT brief filed by Appellant Mirna Gomez-Perez. [06-1614] (mani)
6/14/06		APPENDIX filed by Appellant Mirna Gomez-Perez. Copies: 5. Volumes: 2. Delivered by mail. Certificate of service date 6/13/06. [1135320-1] [06-1614] (mani)
6/16/06		ATTORNEY Nelson J. Perez-Sosa for Appellee US Postal Service added to case. [06-1614] (mani)
6/16/06		APPEARANCE filed by Nelson J. Perez-Sosa for Appellee US Postal Service. [1136096-1] [06-1614] (mani)
7/7/06		ORDER entered by Chief Judge Michael Boudin. The decision whether to schedule this appeal for oral argument will be made after briefing is completed, but if the court decides to hear argument, argument will be scheduled for a Puerto Rico sitting. (06-1614] (mani)
7/13/06		MOTION requesting an extension of time to file brief filed by Appellees. Ext. Code: OTH Certificate of service dated 7/12/06. [06-1614] (mani)

DATE	NO.	PROCEEDINGS
7/14/06		ORDER entered. Upon consideration of motion of appellee, It is ordered that the time for the appellee to file its brief be enlarged to and including August 14, 2006. [06-1614] (mani)
8/15/06		ATTORNEY August E. Flentje for Appellee John E. Potter added to case. [06-1614] (mani)
8/15/06		APPEARANCE filed by August E. Flentje for Appellee John E. Potter. (1156022-1] [06-1614] (mani)
8/15/06		BRIEF filed by Appellee John E. Potter Length: 11,122 words, Copies: 9, delivered by mail. Certificate of service date 8/14/06. [1156023-1] Reply due 8/29/06. [06-1614] (mani)
8/15/06		ELECTRONIC DOCUMENT brief filed by Appellee John E. Potter. (06-1614] (mani)
8/30/06		REPLY BRIEF filed by Appellant Mirna Gomez-Perez. Length: 14 pages, Copies: 9, delivered by mail. Certificate of service date 8/18/06. (1161507-1] [06-1614] (mani)
8/30/06		ELECTRONIC DOCUMENT reply brief filed by Appellant Mirna Gomez-Perez. [06-1614] (mani)
9/12/06		Assigned for the month of November, Puerto Rico sitting, (11/2/06). [06-1614] (kris)

DATE	NO.	PROCEEDINGS
9/22/06		Designation form filed. Attorney Miguel A. Fernandez-Torres for Appellee John E. Potter will be presenting oral argument. (kris)
9/25/06		Designation form filed. Attorney August E. Flentje for Appellee John E. Potter will be presenting oral argument. (kris)
10/31/06		SUPPLEMENTAL AUTHORITY pursuant to FRAP 28j filed by Appellee John E. Potter. [06-1614] (mani)
11/1/06		Second SUPPLEMENTAL AUTHORITY pursuant to FRAP 28j filed by Appellee John E. Potter. [06-1614] (mani)
11/2/06		CASE ARGUED 11/2/06. Torruella, Baldock, Howard, JJ. Edelmiro A. Salas Gonzalez for Appellant Mirna Gomez-Perez. August E. Flentje for Appellee John E. Potter. (kris)
2/5/07		SUPPLEMENTAL AUTHORITY pursuant to FRAP 28j filed by Appellee John E. Potter . Certificate of Service 1/31/07 [06-1614] (jenk)
2/9/07		OPINION filed. Judge Juan R. Torruella, Senior Judge Bobby R. Baldock, of the Tenth Circuit, sitting by designation and Judge Jeffrey R. Howard Signed Judge Juan R. Torruella, Authoring Judge PUBLISHED [1213221-1] [06-1614] (frnk)

DATE	NO.	PROCEEDINGS
2/9/07		JUDGMENT entered by Judge Juan R. Torruella, Senior Judge Bobby R. Baldock, of the Tenth Circuit, sitting by designation and Judge Jeffrey R. Howard: s cause came on to be heard on appeal from the United States District Court for the District of Puerto Rico and was argued by counsel. Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed. [1213222-1] [06-1614] (frnk)
3/7/07		ATTORNEY Joseph R. Guerra for Appellant Mirna Gomez-Perez added to case. [06-1614] (jenk)
3/7/07		APPEARANCE filed by Joseph R. Guerra for Appellant Mirna Gomez-Perez. [1222669-1] [06-1614] (jenk)
3/7/07		MOTION filed by Appellant Mirna Gomez-Perez for rehearing en banc. [1222670-1] Certificate of service dated 3/6/07 . [06-1614] (jenk)
3/7/07		ELECTRONIC DOCUMENT appellant's petition for rehearing en banc filed by Appellant Mirna Gomez-Perez. [06-1614] (jenk)
3/20/07		ORDER entered: The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active

DATE	NO.	PROCEEDINGS
		judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be denied. [06-1614] (jenk)
4/2/07		MANDATE ISSUED. [06-1614] (jenk)
4/2/07		RECORD consisting of 1, 2, 5-7, 9, 12, 19, 20, 22, 24, 27, 35, 43, 44, 47-50, 56, 57, 60-62, 64-66, 68, 74-76 returned to originating court. (cher)
4/6/07		U.S. SUPREME COURT NOTICE filed regarding petition for writ of certiorari. Filed in the Supreme Court on 3/30/07 [1235013-1]. Supreme Court case number: 06-1321. [06-1614] (susn)
10/2/07		U.S. SUPREME COURT ORDER granting petition for writ of certiorari filed in the Supreme Court on 03/30/0. A briefing schedule has been scheduled up until November 5, 2007. [06-1614] (meli)

IN THE UNITED DISTRICT COURT
DISTRICT OF PUERTO RICO

CIVIL NO. 03-2236

MYRNA GÓMEZ-PÉREZ
Plaintiff

vs.

JOHN E. POTTER, Postmaster General,
UNITED STATES POSTAL SERVICE
Defendant

UNLAWFUL EMPLOYMENT PRACTICE ACTION
FOR AGE DISCRIMINATION

DEMAND FOR JURY TRIAL

COMPLAINT

TO THE HONORABLE COURT:

COMES NOW the Plaintiff, Ms. MYRNA GÓMEZ-PÉREZ, through the undersigned attorney and respectfully submit this Complaint in the following terms:

I. JURISDICTION AND VENUE

1. This district court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, since the present action arises under the laws of the United States. It also has jurisdiction pursuant to 28 U.S.C. § 1339, since this action arises under an Act of Congress relating postal matters and under 42 U.S.C. § 2000e-5(f) (1) and (3), since it arises under the Equal Employment Opportunity Act provisions.

2. Venue is proper for this Court under 42 U.S.C. §2000e-5(f)(3), since the unlawful employment practice is alleged to have been committed within the judicial district of Puerto Rico, in which Plaintiff's employment records relevant to such practice are maintained and administered.

II. THE PARTIES

3. The plaintiff is a citizen of Puerto Rico and of the United States. Ms. Myrna Gómez-Pérez is 47, single and resident of Vega Alta, Puerto Rico. She is a United States Postal Service employee since 1987, presently assigned to the Sabana Seca Postal Station as a "part-time flexible" window clerk. Her address is P.O. Box 2120, Vega Alta, Puerto Rico 00692-2120.

4. Defendant John E. Potter is Postmaster General of the United States Postal Service. The United States Postal Service (hereinafter, "USPS") provides mail processing and delivery services to individuals and businesses within the United States, its territories and possessions, including the Commonwealth of Puerto Rico, where Plaintiff has been assigned, and where her employment records are maintained. The USPS was created as an independent establishment of the executive branch of the United States Government by the Postal Reorganization Act of 1970, 39 U.S.C. §§101 *et seq*. Its address is 475 L'Enfant Plaza SW, Washington, D.C. 20260-0010.

III. THE FACTS

5. Plaintiff, 47, is a postal employee with more than 15 years of experience working for the USPS. Up to October 2002, Plaintiff occupied a position of Regular ("Full-Time") Window Distribution Clerk in the Dorado Post Office.

6. In or around October 24, 2002, Plaintiff requested a voluntary transfer to the Moca Post Office to occupy a "part-time flexible" ("PTF") window distribution clerk position in said station in order to be near her mother, whom at the time was living in Moca, Puerto Rico and suffering from a serious illness and needed her assistance. Said request was granted, and on November 2, 2002, Plaintiff was assigned to the Moca Postal Station as a PTF Window Distribution Clerk.

7. In or around November 21, 2002, Plaintiff wrote to the Dorado Post Office Postmaster requesting to be reassigned back to her previous position in the Dorado Postal Station. She stated that her family emergency was solved, that her mother moved with Plaintiff's sisters in New York and she did not longer wanted to be assigned to the Moca Post Office.

8. Said petition was denied, and the reason for the denial was that Plaintiff's position was converted from Regular to "PTF" status and was granted to another postal employee who requested a transfer to the Dorado Post Office. Plaintiff later learned that said employee was female, much younger and with less experience than Plaintiff.

9. On or around December, 2002, Plaintiff submitted a grievance through the American Postal Workers Union (AFL-CIO) to the USPS Labor Relations in Puerto Rico, requesting to be transferred back to the Dorado Post Office position she hold until November 2, 2002. On December 16, 2002, USPS Labor Relations delegate in Puerto Rico denied the grievance.

10. On February 22, 2003, Plaintiff filed a complaint with the USPS Equal Employment Opportu-

nity Compliance and Appeals Processing Center of the New York Metropolitan Area, which has jurisdiction on the Puerto Rico postal region. In her complaint, Plaintiff alleged that she was object of discrimination because of age. She also complained that the continued assignment to the Moca Post Office was causing her undue hardship, since she had to drive 77 miles from her home to the station and 77 miles back, six (6) days per week, affecting her health and welfare. She also alleged that the conversion from Regular to PTF status entailed a wage rate reduction since her work hours were reduced.

11. While at the Moca Post Office, Plaintiff was object of jokes and ridicule from some peers after learning that she filed a EEO complaint, including the circulation of a "poster" showing a woman with eyeglasses painted on her and bearing the name "Mirna" in a satiric pose. Moreover, the Moca Post. Office management called her to a meeting to inform her that some employees were accusing her of sexually harassing them. Plaintiff was offended by the allegations and rejected them whatsoever. These allegations caused Plaintiff severe emotional strain and depression. After that, the Moca Postmaster cut her hours in half, affecting her salary even further. Plaintiff alleges that this was retaliation resulting from her filing of the complaint to the USPS' EEO office.

12. The USPS' EEO Center assigned Plaintiff's complaint to an investigator, who filed an Investigative Report and copy of it was sent to Plaintiff on May 5, 2003. Said report states that the Dorado Postmaster was interviewed and denied any discrimination. Since none of the employees in the Moca Postal Station requested a reassignment other than Plaintiff, they were not similarly situated and thus,

the investigator concluded that there was no discrimination because of age in the denial of her transfer request to the Dorado Post Office. Plaintiff was not interviewed by the investigator whatsoever.

13. On May 31st, 2003, Plaintiff was assigned the Sabana Seca, (Toa Baja) Postal Station as a "PTF" Window Distribution Clerk, position she currently holds.

14. On August 20, 2003, the EEO Compliance and Appeals Center for the New York Metropolitan Area and the Caribbean issued a final agency decision, stating that Plaintiff allegedly failed to establish a prima facie case of discrimination. The USPS' EEO Center concluded that Plaintiff was not discriminated against and informed her that it was closing the case with a finding of no discrimination. Counsel of Plaintiff received such decision by August 25, 2003.

15. Plaintiff affirmatively alleges that she was object of discrimination because of her age and that her position in Dorado was granted to a younger, less experienced female employee. Plaintiff further alleges that age was a determining factor in (1) the denial of transfer to her old position in Dorado, and (2) in the transfer of a younger, less experience postal employee to Plaintiff's position in Dorado.

16. Plaintiff further alleges that she was object of retaliation for submitting a complaint to the USPS' EEO Center, and suffered hardship while at the Moca Postal Station as well.

17. Such discriminatory acts, as well as the retaliatory actions caused in Plaintiff severe mental anguish and stress, as well as other health problems, including back pains due to the long drives from her

home to the Moca Station. In addition, her salary was reduced, suffering financial stress as a consequence.

IV. CAUSES OF ACTION

1. *First Cause of Action*

18. Defendant John E. Potter, acting through his supervisors and employees, engaged in an act of discrimination because of age against Plaintiff, by denying her request for transfer to her previous position as Regular Window Distribution Clerk in the Dorado Post Office, and by conceding such position to a younger, less experienced female postal employee. It is affirmatively alleged that age was a determining factor in the above mentioned actions.

2. *Second Cause of Action*

19. Defendant John E. Potter, acting through his supervisors and employees, engaged in retaliatory acts against Plaintiff for her decision to submit a complaint to the USPS' Regional EEO Compliance and Appeals Processing Center, by maintaining Plaintiff in the Moca Post Office for a prolonged period of time, not attending Plaintiff's complaints of peer behavior, raising offensive charges against Plaintiff, which caused her severe mental and emotional strain and depression, and finally by cutting her working hours in half, thereby reducing her salary.

V. THE RELIEF

20. Plaintiff requests a trial by jury in accordance to the provisions of the Constitution of the United States.

21. Plaintiff prays this Honorable Court to issue a Declaratory Judgment holding that defendant discriminated against plaintiff because of her age; en-

joining the respondent from engaging in such unlawful employment practices, and further ordering her reinstatement to her position as a Regular ("Full-Time") Window Distribution Clerk in the Dorado Post Office, with all benefits which she requested on November 22, 2002.

22. Plaintiff prays this Honorable Court to grant her back pay under 42 U.S.C. §2000e-5(g)(1), which Plaintiff estimates in no less than $25,000.00 since November 22, 2002.

23. Plaintiff prays this Honorable Court to grant her damages for mental anguish, severe emotional distress and depression as a direct consequence of defendant's actions, which Plaintiff estimates in no less than $250,000.00.

AND for costs, expert witnesses' fees, attorney's fees pursuant to 42 U.S.C. § 2000e-5(g)(2)(B), and such other and further relief as the Court deems proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 18th day of November, 2003.

/s/ José L. Ramírez De León
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